THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.684 of 2007

05.2.2007

Between:

Mohd. Osman Farash, S/o.Shaik Ali
And others

... Petitioners

AND

The District Collector, Mahaboobnagar District
And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.684 of 2007

ORDER:

On an application made by one Farash Mahaboob Ali, S/o.Shaik Hussain, the predecessor of the petitioners, claiming Occupancy Rights Certificate (ORC) under A.P. (Telangana Area) Abolition of Inams Act, 1955 (the Act, for brevity), the second respondent by proceedings bearing Nos.3308/75, 3703/75, 3542/75 and 3522/75, dated 17.8.1978, rejected the claim for grant of ORC. The second respondent also observed that though the land is meant as an inam for service as farash, a patta was made in favour of Talakanti Sai Reddy, the father of the third respondent herein. Five years thereafter, the predecessor of the petitioners preferred an appeal under Section 24 of the Act before the first respondent. By an order dated 03.5.1983 in Reference No.B2/62/78, the first respondent dismissed the appeal observing that the Act has no application to the patta land. About 25 years thereafter, the petitioners chose to file the present writ petition on 10.11.2005.

Learned Counsel for the petitioners, Sri Mantri Rama Rao, submits that the land registered as inam land cannot be converted into a patta land except in accordance with the procedure contemplated under the Act and, therefore, the order of the second respondent and the order of the first respondent observing that the dispute has to be resolved in the civil Court is erroneous. He submits that both the authorities failed to exercise the jurisdiction vested in them and that the civil Court has no jurisdiction to decide the matter. He further submits that the land was acquired

under the Land Acquisition Act, 1894 (LA Act, for brevity) and now stands referred to the civil Court under Section 18 of LA Act being O.P.No.27 of 1997. He submits that the petitioners were under the impression that the question could be raised in the civil Court and as held by the Supreme Court in **Lokraj v Kishan Lal**[1] the Civil Court has no jurisdiction and, therefore, the present writ petition is filed.

It is axiomatic that as a rule of prudence, the Court of judicial review ordinarily is not inclined to accept stale claims barred by delay and laches for adjudication. The reason for this principle has been lucidly stated by a Constitution Bench Supreme Court in **R.S.Deodhar v State of Maharashtra**[2] as below.

> ... ... It must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C. J., in *Tilockchand Motichand v. H. B. Munshi*, (1969) 2 SCR 824 = (AIR 1970 SC 898) "is one discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose." ... ... It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights, which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay.

Admittedly the father of the third respondent found to be patta holder for which reason the ORC was denied to the predecessor of the petitioners. If this writ petition is allowed, it would amount to reviving the issue, which was settled by the revenue authorities about 25 years ago. If the petitioners claim any right in the land, which is now acquired under LA Act, they can as well agitate for the same in the Reference pending before the civil Court under Section 18 of LA Act. The case in **Lokraj** (supra), is an authority for proposition that after the date of vesting of the inam land in the State, even inamdar cannot transfer

the land to a third party and such third party cannot claim any right. In this case, the petitioners allegedly claim a right to the land. Therefore, as observed by the second respondent, they have to approach the civil Court.

The writ petition is wholly misconceived and is accordingly dismissed. No costs.

(**V.V.S.RAO,J**)

February 05, 2007.
YS

---

[1] (1995) 3 SCC 291
[2] AIR 1974 SC 259